

ORIGINAL

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF  
EPCOR WATER ARIZONA, INC. FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WASTEWATER  
UTILITY SERVICE IN MARICOPA COUNTY,  
ARIZONA.

DOCKET NO. WS-01303A-15-0018

**STAFF'S CLARIFYING  
COMMENTS TO RECOMMENDED  
OPINION AND ORDER**

On September 30, 2015, a Recommended Opinion and Order ("ROO") was filed in the above captioned matter. Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") has reviewed the ROO and based upon Staff's review believes that the ROO incorrectly describes positions attributed to Staff regarding the proposed new certificate of convenience and necessity ("CC&N") sought by EPCOR. Staff's comments to the ROO clarify Staff's actual position on the matters Staff noted.

At page 30, the ROO apparently merges Staff's primary position with a separate observation Staff noted regarding regulatory approvals over which the Commission has no oversight, thereby creating the impression that Staff's primary concern is actually a hybrid of the two. Staff did note that the Maricopa Association of Governments ("MAG") 208 Plan Amendment designating a utility as the regional wastewater solution lends itself to some degree of regulatory inertia toward grant of an eventual CC&N to that utility. Tr. at 153-54. However, Staff's primary concern is that the WFAs, not the MAG 208 Amendment, create economic inertia that exerts pressure on the Commission to confirm, via grant of a CC&N, what a utility and developer have already agreed to between themselves through the WFAs and in reliance upon said WFAs the utility has already collected substantial sums from the developer. As the ROO correctly quotes from the testimony of Staff's witness:

1 [T]he real crux of the difference is how – the treatment of the WFAs. And I think,  
2 from Staff's perspective, recognizing those for ratemaking purposes would be a very  
3 bad precedent and that, you know, it doesn't provide EPCOR with a 100 percent lock  
4 on these areas, but it certainly, if they, if agreements are entered into before there is a  
CC&N and then the Commission recognizes those for ratemaking purposes, that could  
send a signal to other companies to conduct similar actions.

5 ROO at 30 quoting Tr. at 203. As the testimony continued, it further confirmed that the spotlight of  
6 Staff's attention is on the WFAs, not the MAG 208 Amendment. Under questioning from the  
7 Administrative Law Judge, Staff's witness stated that Staff's primary concern is the WFAs creating a  
8 preferred provider scenario. Tr. at 203-02.

9 Therefore, Staff submits that it would be appropriate to clarify that the two concerns are  
10 separate by restating the sentence in the ROO beginning at page 30, line 10 to state:

11 Staff further notes that the MAG Amendment seems to make EPCOR a "preferred  
12 provider" for the entire MAG Amendment Area, which exceeds 10,000 acres, even  
13 though EPCOR does not yet have and is not currently seeking CC&N authority for the  
entire area.

14 (Changes noted in underline).

15 Additionally, at page 42, the ROO mistakenly asserts that the Staff position regarding risk is  
16 that landowners/developers should not share the risk of development. Staff's position on the matter  
17 of risk is that the developer *should* bear the risk of onsite facilities for an initial grant of CC&N. *See*  
18 Tr. at 197. It is only with respect to the off-site facilities (i.e. regional scale) that Staff has taken the  
19 position that the utility should bear the risk of development for an *initial* grant of CC&N. *Id.* at 198.  
20 Further, the testimony reflects that Staff believes that the risk of development for off-site facilities  
21 should be borne by developers once the CC&N is in existence and would be implemented by  
22 approval of hook-up fees in a rate case following creation of the new CC&N. *Id.* at 207. As Staff  
23 explained, this protects ratepayers once a CC&N is already established. *Id.* at 206-07.

24 Consequently, Staff believes that it would be appropriate to restate the sentence beginning at  
25 page 42, line 17 to state:

26 ...

27 ...

1 In addition, the Commission does not agree with Staff's position in this matter that  
2 landowners/developers should not share the risk of regional (off-site) development for  
3 a new CC&N.

4 (Changes noted in underline).

5 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of October, 2015.

6 

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14 Original and thirteen (13) copies of the  
15 foregoing filed this 9<sup>th</sup> day of October,  
16 2015, with:

17 Docket Control  
18 Arizona Corporation Commission  
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20 Phoenix, Arizona 85007

21 Copy of the foregoing mailed this  
22 9<sup>th</sup> day of October, 2015, to:

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